

1
2 STATE OF CALIFORNIA
3 ENVIRONMENTAL PROTECTION AGENCY
4 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

5 In the Matter of:) Docket HWCA 00/01-4011
6 Frank W. Anderson) ENFORCEMENT ORDER
7 1303-A East Highway 98)
8 Calexico, California 92231)
9 EPA ID No. CAD 980696041) Health and Safety Code
10 Respondent.) Section 25187
11)

12 INTRODUCTION

13 1.1. Parties. The State Department of Toxic
14 Substances Control (Department) issues this Enforcement Order
15 (Order) to Frank W. Anderson (Respondent).

16 1.2. Site. Respondent generates, handles, treats,
17 stores, disposes and transports hazardous wastes at the following
18 site: 1492 East Highway 98, Calexico, Imperial County
19 California (Site).

20 1.3. Permit/Interim Status. The Department has not
21 authorized Respondent to treat, store, or dispose hazardous
22 wastes at the Site. The Department did authorize Respondent to
23 transport hazardous wastes by registration #747 issued to
24 Anderson, Frank W. on an annual renewal which expires on May 31,
25 2002.

26 1.4. Jurisdiction. Section 25187 of the Health and
27 Safety Code (HSC) authorizes the Department to order action
necessary to correct violations and assess a penalty when the

1 Department determines that any person has violated specified
2 provisions of the Health and Safety Code or any permit, rule,
3 regulation, standard, or requirement issued or adopted pursuant
4 thereto.

5 1.5. Exhibits. All exhibits attached to this Order
6 are incorporated herein by this reference.

7 1.6. Applicable Statutes and Regulations. Copies of
8 the statutes and regulations applicable to this Order are
9 attached as Exhibit 1.

10 DETERMINATION OF VIOLATIONS

11 2. The Department has determined:

12 2.1. The Respondent violated Section 25189.2(c) of the
13 Health and Safety Code (HSC) in that on or about October 22, 1999
14 Respondent caused the disposal of used oil, a California
15 hazardous waste, at an unauthorized location.

16 2.2. The Respondent violated Section 25201 HSC in that
17 on or about October 20, 1999, and continuing to this day,
18 Respondent has been operating a hazardous waste treatment and
19 storage facility at the Site without a permit or grant of
20 authorization from the Department.

21 2.3. Respondent violated Section 66262.34(a)(1)(A)
22 Title 22 California Code of Regulations in that on or about
23 October 20, 1999, Respondent used seven, 5-gallon plastic pails
24 that did not have hazardous waste labels or lids covering their
25 openings to hold used oil. Respondent also used a 4,000 gallon-
26 capacity metal tank that did not have a hazardous waste label or
27 a lid covering the inlet to the tank, to hold used oil.



SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination Of Violations,
IT IS HEREBY ORDERED THAT:

3.1.1. Immediately upon the effective date of this Order Respondent shall have a independent contractor conduct a Preliminary Endangerment Assessment (PEA), or its equivalence, of the Site. Any completed PEA and conclusions must be approved by the Department before implementation of a Department approved cleanup remedy. All hazardous wastes removed must be transported by a registered hauler of hazardous waste and to a facility authorized to accept said hazardous wastes.

3.1.2 Immediately upon the effective date of this Order Respondent shall cease and desist the use of all tanks and/or containers used for the treatment and storage of hazardous wastes at the Site.

3.1.3. Immediately upon the effective date of this Order Respondent shall keep all containers of hazardous wastes closed except when adding or removing the hazardous wastes.

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Nennet V. Alvarez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Phil Gruenberg
Executive Officer
California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, California 92260



1 Thomas Wolf, Director
2 Imperial County
3 Environmental Health Services
4 939 West Main Street
5 El Centro, California 92244

6 3.3. Communications. All approvals and decisions of
7 the Department made regarding submittals and notifications will
8 be communicated to Respondent in writing by the Branch Chief,
9 Department of Toxic Substances Control, or his/her designee. No
10 informal advice, guidance, suggestions, or comments by the
11 Department regarding reports, plans, specifications, schedules,
12 or any other writings by Respondent shall be construed to relieve
13 Respondent of the obligation to obtain such formal approvals as
14 may be required.

15 3.4. Department Review and Approval. If the
16 Department determines that any report, plan, schedule, or other
17 document submitted for approval pursuant to this Order fails to
18 comply with the Order or fails to protect public health or safety
19 or the environment, the Department may:

20 a. Modify the document as deemed necessary and approve
21 the document as modified, or

22 b. Return the document to Respondent with recommended
23 changes and a date by which Respondent must submit to the
24 Department a revised document incorporating the recommended
25 changes.

26 3.5. Compliance with Applicable Laws: Respondent
27 shall carry out this Order in compliance with all local, State,
and federal requirements, including but not limited to
requirements to obtain permits and to assure worker safety.



1 3.6. Endangerment during Implementation: In the event
2 that the Department determines that any circumstances or activity
3 (whether or not pursued in compliance with this Order) are
4 creating an imminent or substantial endangerment to the health or
5 welfare of people on the site or in the surrounding area or to
6 the environment, the Department may order Respondent to stop
7 further implementation of this Order for such period of time as
8 needed to abate the endangerment. Any deadline in this Order
9 directly affected by a Stop Work Order under this section shall
10 be extended for the term of the Stop Work Order.

11 3.7. Liability: Nothing in this Order shall
12 constitute or be construed as a satisfaction or release from
13 liability for any conditions or claims arising as a result of
14 past, current, or future operations of Respondent.
15 Notwithstanding compliance with the terms of this Order,
16 Respondent may be required to take further actions as are
17 necessary to protect public health or welfare or the environment.

18 3.8. Site Access: Access to the site shall be
19 provided at all reasonable times to employees, contractors, and
20 consultants of the Department, and any agency having
21 jurisdiction. Nothing in this Order is intended to limit in any
22 way the right of entry or inspection that any agency may
23 otherwise have by operation of any law. The Department and its
24 authorized representatives shall have the authority to enter and
25 move freely about all property at the Site at all reasonable
26 times for purposes including but not limited to: inspecting
27 records, operating logs, and contracts relating to the Site;



1 reviewing the progress of Respondent in carrying out the terms of
2 this Order; and conducting such tests as the Department may deem
3 necessary. Respondent shall permit such persons to inspect and
4 copy all records, documents, and other writings, including all
5 sampling and monitoring data, in any way pertaining to work
6 undertaken pursuant to this Order.

7 3.9. Data and Document Availability. Respondent shall
8 permit the Department and its authorized representatives to
9 inspect and copy all sampling, testing, monitoring, and other
10 data generated by Respondent or on Respondent's behalf in any way
11 pertaining to work undertaken pursuant to this Order. Respondent
12 shall allow the Department and its authorized representatives to
13 take duplicates of any samples collected by Respondent pursuant
14 to this Order. Respondent shall maintain a central depository of
15 the data, reports, and other documents prepared pursuant to this
16 Order. All such data, reports, and other documents shall be
17 preserved by Respondent for a minimum of six years after the
18 conclusion of all activities under this Order. If the Department
19 requests that some or all of these documents be preserved for a
20 longer period of time, Respondent shall either comply with that
21 request, deliver the documents to the Department, or permit the
22 Department to copy the documents prior to destruction.
23 Respondent shall notify the Department in writing at least six
24 months prior to destroying any documents prepared pursuant to
25 this Order.

26 3.10. Government Liabilities: The State of California
27 shall not be liable for injuries or damages to persons or

1 property resulting from acts or omissions by Respondent or
2 related parties in carrying out activities pursuant to this
3 Order, nor shall the State of California be held as a party to
4 any contract entered into by Respondent or its agents in carrying
5 out activities pursuant to the Order.

6 3.11. Incorporation of Plans and Reports. All plans,
7 schedules, and reports that require Department approval and are
8 submitted by Respondent pursuant to this Order are incorporated
9 in this Order upon approval by the Department.

10 3.12. Extension Request: If Respondent is unable^{to}
11 perform any activity or submit any document within the time
12 required under this Order, the Respondent may, prior to
13 expiration of the time, request an extension of time in writing.
14 The extension request shall include a justification for the
15 delay.

16 3.13. Extension Approvals: If the Department
17 determines that good cause exists for an extension, it will grant
18 the request and specify in writing a new compliance schedule.

19 OTHER PROVISIONS

20 4.1. Additional Enforcement Actions: By issuance of
21 this Order, the Department does not waive the right to take
22 further enforcement actions.

23 4.2. Penalties for Noncompliance: Failure to comply
24 with the terms of this Order may also subject Respondent to
25 costs, penalties, and/or punitive damages for any costs incurred
26 by the Department or other government agencies as a result of

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1 such failure, as provided by HSC section 25188 and other
2 applicable provisions of law.

3 4.3. Parties Bound: This Order shall apply to and be
4 binding upon Respondent, and its officers, directors, agents,
5 employees, contractors, consultants, receivers, trustees,
6 successors, and assignees, including but not limited to
7 individuals, partners, and subsidiary and parent corporations.

8 4.4. Time Periods. "Days" for purposes of this Order
9 means calendar days.

10 PENALTY

11 5. Based on the foregoing DETERMINATION OF VIOLATIONS,
12 the Department sets the amount of Respondent's penalty
13 at \$60,500.00. Payment is due within 30 days from the effective
14 date of the Order. Respondent's check shall be made payable to
15 the Department of Toxic Substances Control, and shall identify
16 the Respondent and Docket Number, as shown in the heading of this
17 case. Respondent shall deliver the penalty payment to:

18 Department of Toxic Substances Control
19 Accounting Office
20 400 P Street, 4th Floor
21 P. O. Box 806
22 Sacramento, California 95812-0806

23 A photocopy of the check shall be sent to:

24 Nennet V. Alvarez, Chief
25 Cypress Branch
26 Statewide Compliance Division
27 Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

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1 RIGHT TO A HEARING

2 6. Respondent may request a hearing to challenge the
3 Order. Appeal procedures are described in the attached Statement
4 to Respondent.

5 EFFECTIVE DATE

6 7. Personal service This Order is final and effective
7 fifteen days from the date it is served on Respondent, unless
8 Respondent requests a hearing within the fifteen-day period.

9 Date of Issuance July 19, 2001.

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11 Nennet V. Alvarez
12 Nennet V. Alvarez, Chief
13 Cypress Branch
14 Statewide Compliance Division
15 Department of Toxic Substances
16 Control

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